

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
CHRISTOPHER VAN GUNDY, Cal. Bar No. 152359
3 ABBY H. MEYER, Cal. Bar No. 294947
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4109
Telephone: 415.434.9100
5 Facsimile: 415.434.3947
E-mail: cvangundy@sheppardmullin.com
6 ameyer@sheppardmullin.com

7 Attorneys for Plaintiff BLEND, LLC,
a California limited liability company

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 BLEND, LLC, a California limited liability
company,

14
15 Plaintiff,

16 v.

17 GLENWOOD SMOKED PRODUCTS,
INC., an Idaho corporation, GLENWOOD
18 SNACKS, LLC, an Idaho limited liability
company, MITCH SCOTT, an individual,
19 CLARK SCOTT, an individual, KOLBAN
SCOTT, an individual, SCOTT
20 ZABRISKIE, an individual, and DANIEL
21 HALLER, an individual,

22 Defendants.
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Case No. 19-cv-03834-DMR

**SECOND JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT PURSUANT TO FED. R.
CIV. P. 26(f) AND CIVIL L.R. 16-9**

Hearing Date: March 4, 2020
Time: 1:30 pm
Ctrm.: 4
1301 Clay Street
Oakland, California 94612
Judge: Honorable Donna M. Ryu

1 In accordance with Rule 26(f) of the Federal Rules of Civil Procedure, Civil L.R.
 2 16-9 and the Standing Order for All Judges of the Northern District of California, Plaintiff
 3 BLEND, LLC (“Plaintiff” or “Blend”) and Defendants GLENWOOD SMOKED
 4 PRODUCTS, INC. (“Glenwood Smoked Products”), GLENWOOD SNACKS, LLC
 5 (“Glenwood Snacks”), MITCH SCOTT, CLARK SCOTT, SCOTT ZABRISKIE, and
 6 DANIEL HALLER (collectively, “Defendants,” and together with Plaintiff, the “Parties”),
 7 by and through their respective counsel, have met and conferred and hereby submit the
 8 following Second Joint Case Management Statement (the “Joint Statement”).

9 **1. JURISDICTION AND SERVICE**

10 By order dated January 9, 2020, this Court denied Defendants’ motions to transfer
 11 the case and/or change venue. (*See* Dkt. 54.) This Court has jurisdiction and venue over
 12 the Parties and the claims and defenses in this action.

13 **2. FACTS**

14 **a. Plaintiff’s Statement**

15 On April 1, 2016, Blend and Defendant Glenwood Smoked Products entered into a
 16 certain Recipe/Formulation Agreement (the “Agreement”) for the development of
 17 “Barbacoa” beef and pork jerky products (“Jerky Products”). “Barbacoa” refers to a
 18 Mexican-style barbeque and spice flavor profile for jerky. (*See* Dkt 1-1). Defendants
 19 Mitch Scott and Clark Scott were controlling officers, directors, shareholders, or managing
 20 agents of Glenwood Smoked Products.

21 Pursuant to the Agreement, Glenwood Smoked Products agreed to “create jerky
 22 recipes for Blend according to blend’s [sic] specifications on texture, flavor, type of meat,
 23 nutrient content and any other requests pertaining to recipe development.” (*See* Dkt 1-1.)
 24 Per the Agreement, “[s]hould Blend choose to use any of these recipe(s) developed by
 25 Glenwood for any reason, including manufacturing outside of Glenwood’s services,
 26 Glenwood agree[d] to provide all recipe development/formulations to Blend LLC.” (*Id.*)
 27 Glenwood Smoked Products also undertook to make all submissions to the U.S.
 28 Department of Agriculture (“USDA”) for mandatory pre-market approval of labeling,

1 including the ingredient statement, and to ensure that the packaged product conformed to
2 the USDA-approved labeling.

3 Between July 2016 and December 2017, certain Jerky Products ingredients,
4 processing instructions, and package labeling, were developed, submitted to USDA by
5 Glenwood Smoked Products, approved, then manufactured by Glenwood Smoked
6 Products, and brought to market by Blend. Blend developed a significant customer base
7 for the Jerky Products, including a confirmed large purchase order from Costco Australia.
8 Unbeknownst to Blend, however, the ingredient changes made by Glenwood Smoked
9 Products to accommodate Blend's desired product profile after USDA approval required
10 submission of new labeling forms to USDA, which Glenwood Smoked Products never
11 made.

12 In January 2018, Glenwood Smoked Products sold substantially all of its assets,
13 including its manufacturing facility, to Glenwood Snacks. Glenwood Snacks is therefore
14 the successor-in-interest to the Recipe Agreement and accrued all benefits and obligations
15 of the Agreement. Defendants Scott Zabriskie and Daniel Haller are among Glenwood
16 Snacks' controlling officers, directors, shareholders, or managing agents.

17 In or about January, 2018, Glenwood Snacks manufactured Jerky Products for
18 Blend using the recipes it obtained from Glenwood Smoked Products. Glenwood Snacks
19 either never checked to see if the recipes matched what was on file with USDA, as is
20 legally required, or never bothered to obtain new approvals. For many years prior to
21 taking over the Glenwood Smoked Products' business, Glenwood Snacks manufactured
22 and distributed its own line of competing jerky products, and decided in the early part of
23 2018 no longer to manufacture the Barbacoa products.

24 Once Glenwood Snacks decided no longer to manufacture the Jerky Products, it
25 was critical for continued distribution of the Jerky Products that Glenwood Snacks turn
26 over to Blend complete recipe information without delay because Blend never had
27 manufacturing capability of its own, and would need to line up a new manufacturer in
28 short order. The Recipe Agreement expressly provided that if Blend wanted to

1 manufacture the product without Glenwood Snacks and demanded the recipes, Glenwood
2 Snacks was required to “turn over *all* recipe development/formulations,” and broadly
3 defined “formulations” to mean “ingredients, specifications, manufacture of ingredients,
4 processing steps including order of process, weights, measures, time temperature, etc., and
5 any application methods relevant to flavoring the jerky.” The complete USDA file that
6 Glenwood Snacks possessed for the Barbacoa products was part of the “all” in “all recipes
7 development/formulations,” because it contained the submitted ingredients and processing
8 instructions for the Jerky Products.

9 On or about January 18, 2018, Blend first demanded that Glenwood Snacks turn
10 over complete Recipe information as was its right under the Agreement. Despite knowing
11 of Blend’s customer base and the confirmed Costco Australia purchase order, Glenwood
12 Snacks refused to turn over basic information for approximately one month, and then only
13 basic recipe information, and only over the course of the next several months did
14 Glenwood Snacks release processing instructions and information regarding the spices,
15 and never turned over the complete USDA file. Not only did the USDA file contain
16 ingredient and processing information, but the complete file was required for another
17 manufacturer to make the Jerky Products without delay.

18 Glenwood Snacks erroneously claims that a new manufacturer needed its own
19 USDA approval to make the Jerky Products, but that is wrong, as a USDA website makes
20 clear. Glenwood Snacks’ failure to ensure that the ingredients used to make the products
21 matched the USDA file (or to point out the mismatch to Blend in January 2018 and/or to
22 correct the situation), and its failure timely to turn over complete recipe/formulations to
23 Blend, including the complete USDA file, prevented Blend from continued production,
24 distribution and sales of the Jerky Products, and caused Blend significant loss of future
25 sales and investment in the Jerky Products, as more fully explained in the Complaint.

26 Defendants’ actions constituted breaches of their contractual, fiduciary, and tort
27 duties owed to Blend, entitling Blend to compensatory damages, restitution, and punitive
28 damages.

1 **b. Defendants' Statement (Defendants Glenwood Snacks, LLC, Scott**
2 **Zabriske, and Daniel Haller)**

3 Plaintiff Blend and Glenwood Smoked Products, Inc. (GSP), entered into an
4 agreement known as the Recipe/Formulation Agreement in April 2016. Pursuant to the
5 terms of that agreement, GSP developed jerky recipes for Blend. That work was
6 completed in 2017. As consideration for their efforts, GSP held a right of first refusal to
7 manufacture jerky on the recipes they developed for Blend.

8 Blend and GSP entered into a Manufacturing Agreement in July 2016 that was
9 meant to govern the GSP's production of jerky product for Blend.

10 In late November 2018, 3S Snacks, LLC executed a purchase agreement with GSP
11 by which 3S Snacks acquired some assets of GSP. These included GSP's manufacturing
12 facility, which 3S Snacks operated under the name Glenwood Snacks. The purchase
13 agreement was effective January 1, 2018. Perry Abadir of Blend was notified of the
14 purchase on January 2, 2016 and was advised that the Glenwood facility was under new
15 management and was invited to meet with them.

16 On January 4, 2016, Blend was informed that the Manufacturing Agreement was
17 being transferred to Glenwood Snacks. Pursuant to that agreement, Blend's written
18 consent was necessary for the transfer of "any rights and obligations" established by the
19 agreement. Consent was not forthcoming. In fact, Perry Abadir refused to acknowledge
20 the new management group at Glenwood and expressly repudiated the existence of any
21 agreements between Blend and Glenwood Snack, stating on February 14, 2018, "We will
22 only do business as the current agreements ,emails and Verbal agreements in good faith
23 between -Clark Scott and Mitch Scott ,Kolban Scott .Perry Abadir ,David NGO, Blend
24 LLC."

25 Concurrent with the repudiation of any agreement between Blend and Glenwood
26 Snacks, Blend requested delivery of the recipes for their line of jerky. The request was
27 made on February 14, 2018. Glenwood Snacks delivered the recipes on February 16,
28

1 2018. The information delivered to Blend on February 16, 2018 was sufficient for a
2 knowledgeable manufacturer to begin production of the subject jerky brands.

3 Glenwood Snacks did not have a competing line of jerky products and there will be
4 no evidence that Glenwood Snacks subverted Blend's relationship with any distribution
5 outlet. Glenwood Snacks is informed and believes that the failure of Blend's products was
6 the result of the business practices of Perry Abadir and others at Blend, as well as other
7 factors not related to Glenwood Snacks.

8 **c. Defendants' Statement (Glenwood Smoked Products, Inc., Mitch Scott,
9 and Clark Scott)**

10 Defendants Glenwood Smoked Products, Inc., Mitch Scott, and Clark Scott join in
11 the above statement of the other defendants. In addition to what the other defendants have
12 stated, these defendants aver that they, at all times, faithfully executed their obligations
13 under the Agreement. This compliance included, but is not limited to: providing and/or
14 being willing to provide recipes to Blend; providing and/or being willing to provide
15 recipes to Glenwood Snacks, LLC and/or its individual shareholders, agents, managers,
16 etc.; complying with USDA regulations; and correctly labeling products within accepted
17 USDA and industry standards.

18 These defendants do not concede that Blend experienced any issues with respect to
19 the product; however, in the event Blend experienced issues, the problems stemmed solely
20 from the actions of Blend. Specifically, any mold was due to Blend's decisions with
21 respect to packaging. Glenwood Smoked Products, Inc. warned Blend that its packaging
22 practices failed to meet industry standards. These defendants additionally assert that
23 Blend's problems, if any, stemmed from poor business practices, including, but not limited
24 to, failing to pay suppliers and vendors in a timely manner, not following industry
25 standards with respect to packaging, and failing to communicate with business partners.

26 **3. LEGAL ISSUES**

27 Following meet and confer, the Parties agree that this is largely a factual dispute.
28 However, there is a legal question now about whether Defendant Glenwood Snacks is the

1 legal successor-in-interest to Glenwood Smoked Product's rights, duties, and obligations
2 under the Recipe Agreement and Manufacturing Agreement.

3 **4. MOTIONS**

4 **a. Pending Motions**

5 There are no motions pending at this time.

6 **b. Anticipated Motions**

7 **i. Plaintiff's Position**

8 Plaintiff is considering filing a motion for summary judgment or motion for
9 judgment on the pleadings, requesting that the Court find that Defendant Glenwood Snacks
10 is the legal successor-in-interest to Glenwood Smoked Product's rights, duties, and
11 obligations under the Recipe Agreement and Manufacturing Agreement.

12 While Plaintiff is still meeting and conferring with Glenwood Snacks on several
13 categories of interrogatories and requests for production of documents, it is appearing
14 likely that Plaintiff will have to move to compel on certain of the categories.

15 **ii. Defendants' Position (Defendants Glenwood Snacks, LLC, Scott 16 Zabriske, and Daniel Haller)**

17 Defendants are meeting and conferring with Plaintiff with respect to certain
18 discovery items and anticipate, given the constructive working relationship between the
19 parties, that the majority of those issues will be resolved.

20 **iii. Defendants' Position (Defendants Glenwood Smoked Products, LLC, 21 Mitch Scott, and Clark Scott).**

22 These defendants may file a motion for summary judgment.

23 **5. AMENDMENT OF PLEADINGS**

24 By Order dated October 16, 2019, the last date to amend pleadings was December
25 16, 2019. (*See* Dkt. 30.) By Order dated January 14, 2020, the Court struck Defendants
26 Glenwood Snacks, Scott Zabriskie and Daniel Haller's amended answer to Blend's
27 complaint. (*See* Dkt. 59.)
28

1 **6. EVIDENCE PRESERVATION**

2 The Parties have reviewed the Guidelines Relating to the Discovery of
3 Electronically Stored Information (the “ESI Guidelines”), and hereby each confirm that
4 they have designated an attorney member of their respective legal teams (the “ESI
5 Designees”), to meet and confer regarding reasonable and proportionate steps to be taken
6 to preserve evidence relevant to the issues reasonably evident in this action, as outlined by
7 the Guidelines for the Discovery of Electronically Stored Information.

8 **7. DISCLOSURES**

9 Plaintiff served its Initial Disclosures on the Parties on September 25, 2019.

10 Defendants Glenwood Snacks, Scott Zabriskie and Daniel Haller served their initial
11 disclosures on October 9, 2019.

12 Defendants Glenwood Smoked Products, Mitch Scott and Clark Scott served their
13 initial disclosures on October 16, 2019.

14 **8. DISCOVERY**

15 **a. Discovery Propounded to Date**

16 On October 14, 2019, Plaintiff served the following written discovery:

- 17 (i) Plaintiff's Request for Production to Glenwood Smoked Products, Set One;
- 18 (ii) Plaintiff's Request for Production to Glenwood Snacks, Set One;
- 19 (iii) Plaintiff's Request for Production to Mitch Scott, Set One;
- 20 (iv) Plaintiff's Request for Production to Scott Zabriskie, Set One;
- 21 (v) Plaintiff's Request for Production to Clark Scott, Set One;
- 22 (vi) Plaintiff's Request for Production to Daniel Haller, Set One;
- 23 (vii) Plaintiff's Requests for Admission to Glenwood Smoked Products, Set One;
- 24 (viii) Plaintiff's Requests for Admission to Glenwood Snacks, Set One;
- 25 (ix) Plaintiff's Interrogatories to Glenwood Smoked Products, Set One; and
- 26 (x) Plaintiff's Interrogatories to Glenwood Snacks, Set One.

27 Plaintiff plans to serve notices of deposition on all Defendants shortly. Plaintiff will
28 likely also serve third-party subpoenas for both documents and deposition testimony.

1 Defendants have not served any written discovery to date.

2 **b. Scope of Anticipated Discovery**

3 i. Plaintiff's Discovery

4 Plaintiff is seeking written, documentary, and testimonial discovery from
5 Defendants (and likely third-parties) regarding, among other things: the recipes (both the
6 approved formulations and any subsequent changes or variations thereto); the ingredients
7 for, and manufacturing of, the Jerky Products; relevant communications with or related to
8 USDA; relevant internal and external documents and communications related to Plaintiff,
9 the recipes, and the Jerky Products; quality-related issues with the Jerky Products;
10 damages; any competing Jerky Products; and the asset purchase agreement entered into
11 between Glenwood Smoked Products and Glenwood Snacks.

12 ii. Defendants' Discovery (Joint Statement by All Defendants)

13 Defendants will conduct discovery consisting of written interrogatories, discovery
14 demands and requests for admission as well as third party subpoenas and depositions of
15 parties and third party witnesses. The subject matter of discovery will cover, *inter alia*,
16 Blend's repudiation of all agreements with Glenwood Snacks; correspondence between
17 the parties regarding their business relationships, including the delivery of the recipe
18 information; Blend's business practices and how they adversely affected the performance
19 of Blend's products; Blend's efforts, if any, to manufacture product in fulfillment of its
20 alleged purchase orders; Blend's relationship with other vendors, manufacturers and
21 potential clients, including Costco; and discovery related to Blend's alleged damages.

22 **c. Protective Order**

23 By Order dated January 21, 2020, the Court entered the Parties' Stipulated
24 Protective Order. (*See* Dkt. 63.)

25 **d. Proposed Limitations or Modifications to the Discovery Rules**

26 The Parties do not propose any modifications to limits to written discovery or
27 depositions at this time. The Parties agree that the limits on written discovery or
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1 depositions may be modified by agreement of the Parties or by a showing of good cause to
2 the Court.

3 **e. Service**

4 The Parties hereby consent to service by email, and agree to serve any documents
5 not filed via ECF, including pleadings, discovery requests, subpoenas for testimony or
6 documents, expert disclosure, and delivery of all correspondence, whether under seal or
7 otherwise, by email to all attorneys for the receiving party then appearing on the ECF
8 docket, at the email addresses listed thereon. Courtesy hardcopy service is acceptable, but
9 not required and not in lieu of email service. For purposes of calculating discovery
10 response times under the Federal Rules of Civil Procedure, electronic delivery shall be
11 treated the same as hand delivery.

12 **f. Report on Planned Stipulated E-Discovery Order**

13 At this juncture, it appears that a Stipulated Electronically-Stored Information (ESI)
14 Order will not be necessary. Should circumstances change, the Parties will meet and
15 confer and proffer a stipulation to the Court.

16 **g. Proposed Discovery Plan**

17 By Order dated October 25, 2019, the Court set deadlines governing fact and expert
18 discovery. (*See* Dkt. 37.)

19 **h. Current Discovery Disputes**

20 At this time, there are no discovery disputes. However, as mentioned above,
21 Plaintiff may need to file a motion to compel in order to resolve certain discovery disputes
22 with Defendant Glenwood Snacks.

23 **9. CLASS ACTIONS**

24 This is not a class action.

25 **10. RELATED CASES**

26 There are no “related cases or proceedings” pending before another judge in the
27 Northern District of California, or before another court or administrative body in the
28

1 United States, as defined by the Court's November 1, 2018 Standing Order For All Judges
2 of the Northern District of California.

3 **11. RELIEF**

4 **a. Plaintiff's Relief**

5 As prayed for in the Complaint, Plaintiff seeks: (1) judgment in favor of Plaintiff
6 and against Defendants, and each of them, on all counts; (2) compensatory, incidental,
7 consequential and punitive damages, in the maximum amount provided by law, arising
8 from Defendants' violations of Plaintiff's rights; (3) restitution and/or disgorgement of
9 Defendants' profits to Plaintiff; (4) declaratory and injunctive relief; (5) pre-judgment and
10 post-judgment interest; (6) the costs of suit incurred herein; (7) attorneys' fees and costs
11 incurred in this action; and (8) such other and further relief as the Court may deem just and
12 proper.

13 The damages themselves will consist of lost investment in the Barbacoa Jerky
14 Products, including the costs of labeling, labeling design, general product development,
15 lost sales, and loss of good will. Blend will retain an expert to determine the nature and
16 amount of damages specifically. At this time, Blend estimates based on the information
17 currently available to it that the claimed damages are approximately \$10,000,000.

18 **b. Defendants' Statement (Joint Statement by All Defendants)**

19 Defendants will request that the Court enter judgment in favor of Defendants and
20 against all claims by Plaintiff, that this matter be dismissed with prejudice and will request
21 any other relief that the Court may deem just and proper.

22 **12. SETTLEMENT AND ADR**

23 The Parties participated in a full-day mediation before Magistrate Judge Corley on
24 February 7, 2020. The matter did not settle.

25 The Parties have complied with ADR L.R. 3-5. Plaintiff and Defendants Glenwood
26 Snacks, Scott Zabriskie and Daniel Haller have filed the ADR Certification forms with the
27 Court. (*See* Dkts. 23, 34, 35, and 40.) Defendants Glenwood Smoked Products, Mitch
28 Scott and Clark Scott will file their forms by March 6, 2020.

1 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2 The Parties have consented to the assignment of Magistrate Judge, the Hon. Donna
3 M. Ryu, to conduct all further proceedings including trial and entry of judgment.

4 **14. OTHER REFERENCES**

5 The Parties agree that this case is not suitable for reference to binding arbitration, a
6 special master, or the Judicial Panel on Multidistrict Litigation.

7 **15. NARROWING OF ISSUES**

8 The Parties do not seek any bifurcation of issues at this time. Should it become
9 apparent that issues may be narrowed by stipulation or motion, the Parties will consider
10 how best to do so, including with respect to suggestions that may expedite the presentation
11 of evidence at trial.

12 **16. EXPEDITED TRIAL PROCEDURE**

13 The Parties agree that this case is not suitable for handling under the Expedited
14 Trial Procedure of General Order No. 64.

15 **17. SCHEDULING**

16 By Order dated October 25, 2019, the Court has issued a scheduling order to govern
17 this matter. (*See* Dkt. 37.)

18 **18. TRIAL**

19 By Order dated October 25, 2019, the Court has set a seven-day jury trial,
20 commencing on January 19, 2021 at 9:00 a.m. (*See* Dkt. 37.)

21 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

22 Plaintiff filed its Certificate of Interested Parties and Corporate Disclosure
23 Statement on September 25, 2019. (*See* Dkts. 24 and 25.) Defendant Glenwood Snacks,
24 Scott Zabriskie and Daniel Haller filed their Certificate of Interested Parties and Corporate
25 Disclosure Statement on October 16, 2019. (*See* Dkts. 27 and 28.) Defendants Glenwood
26 Smoked Products, Mitch Scott and Clark Scott will file their forms by March 6, 2020.
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1 **20. PROFESSIONAL CONDUCT**

2 All attorneys of record have reviewed the Guidelines for Professional Conduct for
3 the Northern District of California.

4 **21. SUCH OTHER MATTERS AS MAY FACILITATE THE JUST, SPEEDY,**
5 **AND INEXPENSIVE DISPOSITION OF THIS MATTER**

6 The Parties have not identified any other issues to address with the Court at this
7 time.

8
9 Dated: February 26, 2020

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

11
12 By /s/ Abby H. Meyer
13 CHRISTOPHER VAN GUNDY
14 ABBY H. MEYER

15 Attorneys for Plaintiff BLEND, LLC,
16 a California Limited Liability Company

17 Dated: February 26, 2020

18 MCCAFFERY HOSKING, LLP

19
20 By /s/ Jeffrey D. Hosking
21 JEFFREY D HOSKING
22 JASON B. SHANE

23 Attorneys for Defendants
24 GLENWOOD SNACKS, LLC, SCOTT
25 ZABRISKIE AND DANIEL HALLER
26
27
28

1 Dated: February 26, 2020

2 LITTLER MENDELSON, P. C.

3
4 By

/s/ Adam Bouka

5 ADAM BOUKA

6 Attorneys for Defendants

7 GLENWOOD SMOKED PRODUCTS, INC.,

MITCH SCOTT and CLARK SCOTT

8 Dated: February 26, 2020

9 MURRAY, ZIEL, & JOHNSTON, PLLC

10
11
12 By

/s/ Paul D. Ziel

13 PAUL D. ZIEL

14 Attorneys for Defendant

15 GLENWOOD SMOKED PRODUCTS, INC.,

16 MITCH SCOTT and CLARK SCOTT

FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3) regarding signatures, I, Abby H. Meyer, attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty under the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February, 2020, at Costa Mesa, California.

/s/ Abby H. Meyer
Abby H. Meyer

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

HON. DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE